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Of Counsel:
Richard Lowerre

February 17, 2015

Via U.S. Certified Mail/RRR:

Binh Pham
1004 Peebles Court
Arlington, TX 76013-8324

Hiep Vu
1004 Peebles Court
Arlington, TX 76013-8324

Via U.S. Certified Mail/RRR:

Han Vu
4673 Vespasian Lane
Grand Prairie, TX 75202
(Registered Agent for Service for V.P. Farm, L.L.C.)

Regarding: Notice of Intent to Sue under the Clean Water Act; Storm Water Permit violations at Binh Pham Poultry Farm Site and Hiep Vu Poultry Farm, approximately 0.6 miles northeast of the intersection of State Highway 21 and Manning Lane, Crockett, Houston County, Texas.

Messrs. Pham and Vu:

I write on behalf of John Michael Allen ("Mr. Allen") of Houston County, Texas. This letter provides you both individually and on behalf of V.P. Farm, L.L.C., sixty days' notice that Mr. Allen intends to file a citizen suit in federal court as authorized by §505 of the Federal Water Pollution Control Act, a.k.a., the Clean Water Act ("CWA" or "Act") against V.P. Farm, L.L.C., Binh Pham, and Hiep Vu for violations of the Act.

Construction occurring on the site of the Binh Pham Poultry Farm and the Hiep Vu Poultry Farm (referenced herein as the "Poultry Farm Site") is not being performed in compliance with the TCEQ's "General Permit Relating to Stormwater Discharges Associated with Construction Activities," Permit No. TXR150000 (February 19, 2013). In particular, construction activities are occurring in violation of Permit/Registration Number TXR150013355 as issued to Hiep Vu, and Permit/Registration Number TXR150013353 as issued to Binh Pham. This permit is the federal and State authorization allowing for the discharge of construction storm water from the Poultry

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Farm Site to waters of the U.S. and the State, which discharge is otherwise prohibited by §301(a) of the Act, 33 U.S.C. § 1311(a). “Waters of the United States” is a very broadly-defined term, as is “waters of the State,” and each includes the stream draw present on the Poultry Farm Site, the ponds located on the Poultry Farm Site, and the downstream ponds located on property owned by Mr. Allen.

On several dates, sediment-laden storm water flows originating from the Poultry Farm Site have been discharged into the draw on the Poultry Farm Site, and thence into ponds located on Mr. Allen’s property.

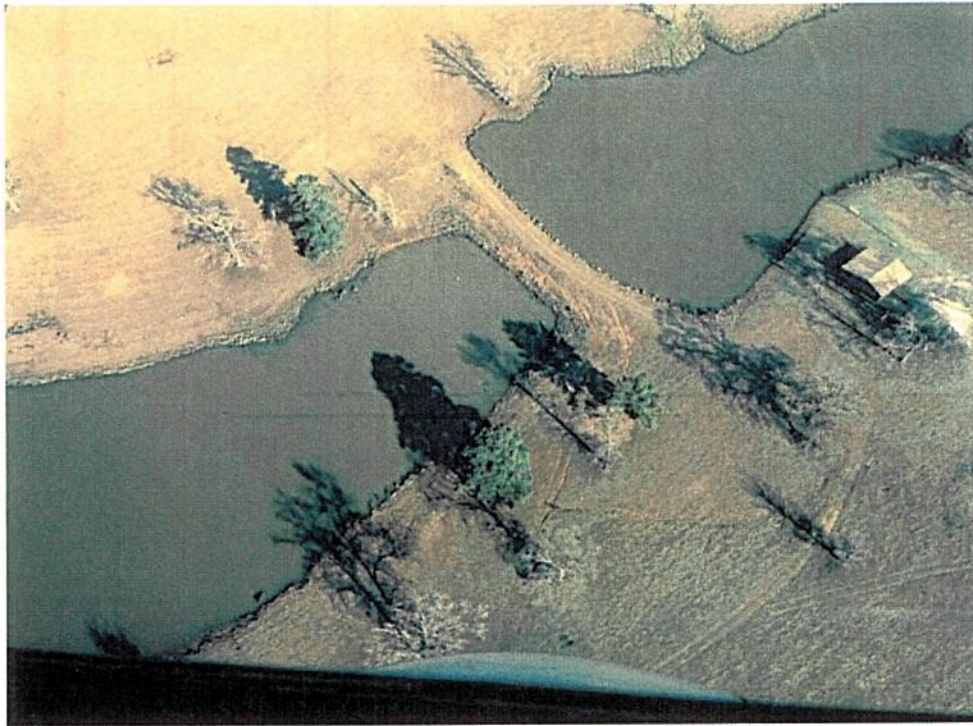
On November 23, 2014, substantial quantities of sediment-laden stormwater were discharged from the Poultry Farm Site. This sediment resulted in significant turbidity in Mr. Allen’s ponds, as shown below.



**Photograph of Mr. Allen’s pond on November 23, 2014, Containing Sediment
Discharged from Poultry Farm Site**

Significant quantities of this sediment remain in Mr. Allen’s ponds.

Again on December 1, 2014, substantial quantities of sediment-laden stormwater were discharged from the Poultry Farm Site causing turbidity in Mr. Allen's ponds, as shown below.



December 6, 2014 Aerial Photograph of Ponds on Allen Property, Containing Sediment Discharged from Poultry Farm Site on December 1, 2014

Substantial quantities of sediment were deposited in Mr. Allen's ponds as a result of this December 1, 2014 discharge event.

Likewise, on December 19th, 2014, substantial quantities of sediment-laden stormwater were discharged from the Poultry Farm Site causing turbidity in the on-site ponds. Substantial quantities of this discharged sediment also travelled downstream into Mr. Allen's ponds.



December 19, 2014 Photograph of Ponds on Poultry Farm Site, Containing Discharged Sediment

Substantial quantities of sediment were deposited in Mr. Allen's ponds as a result of this December 19, 2014 discharge event, and remain in those ponds.

More recently, on January 3, 2015 substantial quantities of sediment-laden stormwater were discharged from the Poultry Farm Site causing turbidity in Mr. Allen's ponds, as shown below.



**January 3, 2015 Photograph of Discharged Sediment from Poultry Farm Site
Flowing onto Mr. Allen's Property**



**Photograph of Mr. Allen's Pond on January 3, 2015, Containing Sediment
Discharged from Poultry Farm Site**

In addition, sediment has been discharged from the site and onto Mr. Allen's property on January 14th and February 16th, 2015.

Sediment deposited as a result of these discharge events remain within Mr. Allen's ponds.

No effort has been made by V.P. Farm, L.L.C., Binh Pham, or Hiep Vu to remove the sediment discharged from the Poultry Farm Site into Mr. Allen's ponds on these various occasions.

These discharges were each in violation of permit TXR150000, Part II, Section C, Paragraphs 2 and 3. Furthermore, each day since each discharge and during which the sediments deposited on the Allen property have remained on his property is, also, a day of violation of permit TXR150000, Part III, Section F, Subparagraph 6(d). As the Permittee under authorization No. TXR150013353, Mr. Binh Pham is liable for these violations. Likewise, as the Permittee under authorization TXR150013355, Mr. Hiep Vu is liable for these violations.

In addition, V.P. Farm, L.L.C., Binh Pham, and Hiep Vu have failed to properly install and maintain silt fencing and hay bales along the boundaries of the project site as required by Paragraph 5.1(2) of the Stormwater Pollution Prevention Plan for each site. This violation has been ongoing at the site on each day since commencement of construction on November 7, 2014.

In sum, V.P. Farm, LLC, Binh Pham, and Hiep Vu have committed the following violations:

- Discharge of sediment-laden stormwater on November 23, 2014;
- Discharge of sediment-laden stormwater on December 1, 2014;
- Discharge of sediment-laden stormwater on November 19, 2014;
- Discharge of sediment-laden stormwater on January 3, 2015;
- Discharge of sediment-laden stormwater on January 14, 2015;
- Discharge of sediment-laden stormwater on February 16, 2015;
- Failure to remove discharged sediment deposited in downstream waters. This violation has been recurring on each day since November 23, 2014; and
- Failure to install and properly maintain silt fencing and hay bales along the boundaries of the site as required by Paragraph 5.1(2) of the Stormwater Pollution Prevention Plan for authorization TXR No. 150013353 and TXR No. 150013355. These violations have been recurring on each day since November 7, 2014.

Mr. Allen intends to sue VP Farms, L.L.C., Binh Pham, and Hiep Vu for committing these violations. In the event litigation on these violations ensues, Mr. Allen intends to sue, as well, for any similar violations post-dating February 16, 2015.

It has been my experience that many businesses consider runoff of sediment-laden storm water from construction sites to be just a natural and necessary part of the construction process - a relatively inconsequential byproduct. This is a view not shared by Congress or by authorities that have studied the effects of sediment-laden storm water runoff. Storm water runoff is one of the most significant sources of water pollution, at times "comparable to, if not greater than, contamination from industrial and sewage sources." Richard G. Cohn-Lee and Diane M. Cameron, "Urban Stormwater Runoff Contamination of the Chesapeake Bay: Sources and Mitigation," *The Environmental Professional*, Vol. 14, p.10, at 10 (1992).

Storm water discharges from land development, illicit discharges, construction site runoff and improper disposal of materials can harm surface water resources, and, in turn, violate water quality standards in two ways. First, storm water discharges can change natural hydrologic patterns. Secondly, they can elevate pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances and floatables. Such contaminants are carried to nearby streams, rivers, lakes and estuaries. Individually and collectively, these pollutants can reduce water quality and threaten one or more designated beneficial uses of surface water. 63 *Fed. Reg.* 1536 (January 9, 1998).

Storm water discharges generated during construction activities, in particular, can cause an array of water quality impacts. The interconnected process of erosion, sediment transport and delivery is the primary pathway for introducing key pollutants, such as nutrients, metals and organic compounds into organic systems. Novotny, V. and Chester, G., "Delivery of Sediment and Pollutants, From Non-Point Sources: A Water Quality Perspective," *Journal of Soil and Water Conservation* 568-576 (1989). Introduction of coarse sediment or a large amount of fine sediment is also of concern because of the potential for filling lakes and reservoirs. Patterson, et al., "Costs and Benefits of Urban Erosion and Sediment Control: North Carolina Experience," 17 *Environmental Management* 167-178. EPA's October 1999 *Report to Congress On The Phase II Storm Water Regulations* states EPA has found that the environmental harm currently caused by discharges from construction activity is well documented and that sediment yields from smaller construction sites are as high or higher than the 20 to 150 tons/acre/year measured from larger sites. EPA, *Report to Congress on the Phase II Storm Water Regulations* (October 1999).

The above-described violations are based upon the best information currently available to the Mr. Allen. Mr. Allen expects, should this dispute progress to litigation, that discovery will identify additional CWA violations. Mr. Allen, if he brings suit, intends to sue for all violations, including those yet to be uncovered.

If you wish to discuss any aspect of this notice or to discuss options for resolving the illegal discharges described in this notice please contact the undersigned. There is benefit to not letting this dispute drift along unresolved. The CWA allows a judge to assess a civil penalty of \$37,500 per day for each day of each violation, and regulations allow adjustment of civil monetary penalties upward for inflation, *see*, 40 C.F.R. pt. 19. Also, 33 U.S.C. § 1365(d) allows the court to award attorneys' fees and costs of litigation to a party that substantially prevails in litigation. Considering that this matter involves recurring daily violations which commenced on November 7, 2014, the amount of such potential penalties could be significant. In any event, I expect to begin within 20 to 30 days significant preparation for litigation that can substantially increase the costs of pre-litigation settlement. And, Mr. Allen is unlikely to delay the filing of a complaint past the end of the 60-day period, even if negotiations are in progress at that time.

Sincerely,



Eric Allmon

Via U.S. Certified Mail/RRR:

Hon. Gina McCarthy
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Via U.S. Certified Mail/RRR:

Hon. Ron Curry
Regional Administrator
Environmental Protection Agency, Region 6
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